

In the Court as set by Article 3 of the Constitution for the United States of America which court is set for:

**district court of the United States
FOR THE WESTERN DISTRICT OF NEW YORK**

Daniel J. Wik

Plaintiff,

v.

Donald R. Kunego,

**NOTICE OF
MOTION TO
RECONSIDER/
CLARIFY/
OBJECTION**

CASE NO: 6:11-cv-06205 CJS

Defendant:

PLEASE TAKE NOTICE, that upon the Affirmation of Daniel J. Wik, dated November 7, 2012, Plaintiff Daniel J. Wik will move this Court before Judge Charles J. Siragusa, for an Order to Reconsider this Courts October 9, 2012 Order granting Defendants Motion for Summary Judgment dismissing Plaintiffs Complaint with prejudice.

If the opposing party intends to file and serve reply papers, pursuant to Local Rule 7.1(c), the opposing party is therefore required to serve opposition papers at least eight business days prior to the return date.

November 7, 2012

*Wik v. Kunego
Motion to Reconsider*

Page 1 of 2

11/7/2012

Daniel J. Wik



Plaintiff without representation
in propria persona
c/o non-domestic
659 Averill Avenue
Rochester, New York 14607
(585)-957-5902

To: Robert H. Flynn
Lippman O'Connor
300 Olympic Towers
300 Pearl Street
Buffalo, New York 14202

In the Court as set by Article 3 of the Constitution for the United States of America which court is set for:

**district court of the United States
FOR THE WESTERN DISTRICT OF NEW YORK**

Daniel J. Wik

Plaintiff,

v.

PROOF OF SERVICE

Donald R. Kunego

CASE NO:6:11-cv-06205-CJS

Defendant:

PROOF OF SERVICE

I, Daniel J. Wik, hereby certify, under penalty of perjury, under the laws of the United States of America, without the "United States" (federal government), that I am at least 18 years of age, and that I personally served the following document(s):

Notice of Motion

Affirmation in Support of Motion to Reconsider/Clarify/Objection

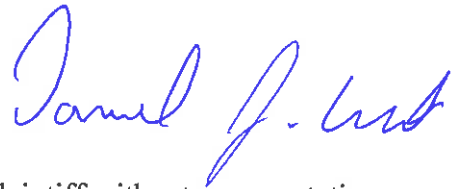
by depositing the same properly and securely enclosed in a sealed wrapper one true and correct copy of said document(s) in a post-office box regularly maintained by the United States, and under the care of the post office at Rochester, New York on the 7th of November 2012, with first class postage prepaid and properly addressed to each of the following:

Lippman O'Connor
300 Olympic Towers
300 Pearl Street

Buffalo, NY 14202

Att: Robert H. Flynn

Daniel J. Wik,



Plaintiff without representation
in propria persona
c/o non-domestic
659 Averill Avenue
Rochester, New York
(585)-957-5902

In the Court as set by Article 3 of the Constitution for the United States of America which court is set for:

**district court of the United States
FOR THE WESTERN DISTRICT OF NEW YORK**

Daniel J. Wik

Plaintiff,

v.

Donald R. Kunego.

**AFFIRMATION IN
SUPPORT OF MOTION
TO RECONSIDER/
CLARIFY/
OBJECTION**

CASE NO:6:11-cv-06205-CJS

Defendant:

Daniel J. Wik respectfully presents and affirms the following under penalty of perjury, under the laws of the United States of America without the "United States" (federal government):

1. I submit this Affirmation in support of my Motion to Reconsider/ Clarify /Objection in response to the October 9, 2012 Decision and Order of this court granting Defendants Motion for Summary Judgment and dismissing Plaintiffs Complaint with prejudice.
2. This Motion shall be deemed to be specific objections to the October 9, 2012 Order and Decision of this Court granting Defendants Motion for Summary Judgment to dismiss Plaintiffs Complaint and preserve all issues involved in this case for appeal.
3. The information set forth in this Affirmation is based upon my personal knowledge and review of the proceedings in this action, and are true and correct to the best of my knowledge.
4. The terms "Plaintiff" and "Plaintiff's", as used in this action, when in specific relation to this action, are defined as a first person singular pronouns (like: I, me, mine, etc.), which pronouns always with regard to this action mean: Daniel J. Wik, the man, or his possessory interest.
5. Plaintiff is bringing this instant motion because some of the evidence included herein was unavailable at the time Plaintiff responded to Defendants Motion for Summary Judgment.

Introduction

6. Plaintiff believes this Court may have misconstrued his pleadings. Plaintiff's action is not about "Defendant allegedly failed to provide him (Plaintiff) with certain documents pertaining to a prosecution against him." This instant action is regarding the Defendant acting in the complete absence of all jurisdiction while performing a non judicial function. Defendant has portrayed that this action is about a mere traffic matter and how it was handled. Contrary the action is about the trespass on Plaintiff's Constitutionally secured Rights by someone acting under color of title and color of entitlement to office within the state who acted in the complete absence of all jurisdictions to restrain Plaintiff of his liberty within the state without probable cause supported by oath or affirmation.
7. Plaintiff's asserts that Defendant was not acting in any "judicial" office or performing a judicial function and any involvement was strictly administrative. Therefore judicial immunity cannot be applied in this particular instance. Plaintiff's Complaint is about how Defendant under these colorable circumstances violated Plaintiff's Constitutionally secured Rights and how Defendant proceeded to move forward in the absence of all jurisdiction and continually violated policies and procedure which have been initiated in order to avoid trespasses on Plaintiff's Rights and others in similar situations. The relief being requested includes but is not limited to declaratory relief, and if it is not available then injunctive relief, and to made Plaintiff whole again. Immunity does not apply to injunctive or declaratory relief.
8. While the Defendant wants to present this matter as a mere small matter that Plaintiff is attempting to make a Constitutional case about. Plaintiff takes these matter very seriously as many people lost their lives during the Revolutionary War fighting for these actual Rights and the founding fathers thought these Rights were so important that they expressly set them forth in the Declaration of Independence and as limitations that Government could not trespass on in order to secure men, like the Plaintiff, Rights. These Rights include but are not limited to the Right to petition for redress of grievance, the Right to be secure in his person against unreasonable seizure, the Right to not be unlawfully restrained in liberty within the state, the Right to a probable cause hearing, the

Right to a habeas corpus hearing, the Right to not be placed in involuntary servitude against his will without being duly convicted of a crime. These matters that Plaintiff complains about are very serious matters and cannot be down played and summarily dismissed as frivolous and non consequential because they are unalienable Rights that Governments were created to protect pursuant to the Declaration of Independence.

Points of Law

Point 1

Information that was used to restrain Plaintiff of his liberty within the state was declared to be facially insufficient and jurisdictionally defective to invoke the court jurisdiction

9. One or about July 27, 2012 Plaintiff was restrained in his liberty within the state; at no time was Plaintiff in or subject to this state as is referenced pursuant to the statutes. All the matters that Plaintiff was alleged to have committed were related to vehicle and traffic statutes. Plaintiff demanded a probable cause hearing, accusatory instruments, information's, all supporting documents, and stated words to Defendant to the effect that Plaintiff did not understand the alleged charges including but not limited to Aggravated Unlicensed Operation of a Motor Vehicle in the Second Degree, New York Vehicle and Traffic Law §511 2A2.
10. At no time has Plaintiff refused to submit to a chemical test pursuant to section eleven hundred ninety-four of the Vehicle and Traffic laws, or has been found driving after having consumed alcohol in violation of section eleven hundred ninety-two-a of the Vehicle and Traffic laws or been convicted for a violation of any of the provisions of section eleven hundred ninety-two of the Vehicle and Traffic laws and clearly repeated several times words to the effect that he did not understand the alleged charges and that there were not allegation or facts to support each and every essential element of any alleged crime and his commission therefore supported by oath or affirmation to invoke any jurisdiction to restrain him in his liberty within the state therefore he could not enter a plea to anything. Plaintiff's questions where not answered, documents were not provided, nor was a timely probable cause hearing held.

11. On or about July 27, 2010 Defendant issued an alleged securing order remanding Plaintiff to the Genesee County Jail for the alleged charge of Aggravated Unlicensed Operation of a Motor Vehicle in the Second Degree, New York Vehicle and Traffic Law §511 2A2. See Exhibit 1 On or about November 16, 2010 Plaintiff again was restrained in his liberty within the state for the failure to appear for the same alleged charge. See Exhibit 2 On or about April 27, 2011 Plaintiff took a plea whereby Plaintiff maintained all innocence to the alleged charges. Plaintiff has not pleaded guilty to any charges and has always maintained his innocence.
12. On or about July 20, 2012 at a term of the County Court in and for the County of Genesee in the case "The People of the State of New York v DANIEL J. WIK" the court issued a Decision and Order dismissing the charge Aggravated Unlicensed Operation of a Motor Vehicle in the Second Degree that Plaintiff was restrained in his liberty for which included but was not limited to the determination: See Exhibit 3

"...the Court finds that the Information charging the defendant-appellant with Aggravated Unlicensed Operation of a Motor Vehicle in the Second Degree is facially insufficient and jurisdictionally defective."...

and

"ORDERED and ADJUDGED that the defendant-appellant's conviction upon the misdemeanor charge of Aggravated Unlicensed Operation of a Motor Vehicle in the Second Degree is reversed and vacated, the fine and surcharge imposed therewith, if are remitted, and the information is dismissed."

13. Without instruments alleging each and every essential element of the alleged crime of aggravated unlicensed Operation of a Motor Vehicle in the Second Degree and the Plaintiffs commission therefore supported by facts under oath or affirmation the court's jurisdiction could not be invoked, Defendant acted in the clear absence of all jurisdiction, and Defendant's acts were not judicial. Defendant's acts were trespasses on the Plaintiff's unalienable and Constitutionally secured Rights as a man.
14. Defendant claims to be trained in the Law and should have known his actions where in the complete absence of all jurisdictions. Defendant had a duty to act cautiously and to

analyze if the court's jurisdiction had been invoked. Defendant knew he was acting in clear absence of all jurisdiction since he refused to allow a timely probable cause hearing to show that there existed no jurisdiction. Defendant was so obsessed with restraining Plaintiff of his liberty that Defendant proceeded in clear absence of all jurisdiction. In this particular instance the Defendant did not error in a matter which he had jurisdiction over; the appellate court has ruled that the court's jurisdiction could not be invoked therefore Defendant was in the clear absence of all jurisdiction.

Even if the act is "judicial," judicial immunity does not attach if the judge is acting in the "clear absence of all jurisdiction." Stump v. Sparkman, 435 U.S., at 357 (quoting Bradley v. Fisher, 13 Wall. 335, 351 (1872)).

Point 2

Immunity does not apply to injunctive and declaratory relief

15. Plaintiff's Complaint against Defendant at ¶162 requests the following relief:

"162. Plaintiff requests injunctive relief barring any continuing and future trespass on and violation of rights against Plaintiff and a declaratory judgment and order that Plaintiff's rights were trespassed on and violated by defendant in that:

- A. Plaintiff's papers were seized without a warrant, without due process.*
- B. Plaintiff was unlawfully restrained in his liberty without a warrant and without due process on or about July 27, 2010.*
- C. Plaintiff was unlawfully restrained in his liberty without a warrant and without due process on or about November 16, 2010 Plaintiff has been denied the right to a speedy trial in direct violation to the Fifth Amendment*
- D. Plaintiff has been denied the right to a speedy trial.*
- E. Plaintiff has been denied the right to be informed of the nature and cause of the accusation.*
- F. Plaintiff has been denied the right to have compulsory process for obtaining witnesses in his favor.*
- G. Plaintiff has been denied his right in liberty and the pursuit of happiness.*

H. Plaintiff has been denied due process to know the constitutional validity of the appointment of Kunego who was allegedly adjudicating the case.

I. Plaintiff has been denied the right to be secure in his person and papers against unreasonable search and seizures.

J. Plaintiff has been deprived of liberty and property without due process.

K. Plaintiff has been placed in slavery or involuntary servitude without being duly convicted of a crime.

L. Plaintiff has been denied equal protection of the law.

M. Plaintiff has been deprived of unalienable rights retained by the people which are not enumerated in the Constitution of the United States of America.

N. Plaintiff has been denied due process by not having two Writ's of Habeas Corpus heard and decided on in Law on the merit.

O. The right to amend this complaint as needed;

P. Trial by jury on each of these herein stated causes of action; and

Q. An order to reimburse Plaintiff for injures and damages caused by Defendant's actions.

R. An order to make Plaintiff whole again.

S. An order punitive and compensatory damages as are determined by a jury.

T. Such other and further relief that this Court may deem just and proper."

16. Judicial immunity does not bar claims seeking injunctive and declaratory relief. The Courts have made it clear that if a declaratory decree was violated or declaratory relief is not available then injunction relief will be allowed. If this Court determines that Plaintiff is not entitled to declaratory relief then Plaintiff is entitled to injunctive against Defendant.

17. It is repugnant to the concepts of the Constitution for this Court to attempt to claim that because Defendant allegedly has the "title" of judge or justice that Defendant is above the Law and cannot and will not be held accountable for any type of relief for violations of Plaintiffs Constitutionally secured rights when acting in the complete absence of all

jurisdiction. Defendant has taken an oath to obey the Constitutions of the United States and The State of New York which are strict limitations that Defendant must act within. Defendant's oath acts as a declaratory decree that Defendant will not act out of the bounds set by the Constitutions. The idea that the Courts will not entertain ANY action whether declaratory, injunctive, or other against Defendant is repulsive in that Defendant has waived any immunity by taking said oath.

18. The purpose of a bond is to provide a remedy for Plaintiff to be able to arrest in the event of a violation of said oath. Under the laws of the state of New York this bond is a requirement prior to being entitled to perform any of the official duties of the office, and in this particular case Defendant lacks any such bond pursuant to the Genesee County Clerk who all bonds are required to be filed with. See Exhibit 4
19. If Defendant has violated his oath and Plaintiffs Rights then Plaintiff is entitled to declaratory judgment as to such and entitled to injunctive relief barring Defendant from further violating Plaintiffs rights.
20. If this court is asserting in its Decision and Order dated on or about October 9, 2012 that anyone with the alleged title of Judge or Justice is above the Law and can trespass on any man's Rights and this court will not allow a man any form of remedy for the trespass and the alleged judge is allowed to continue and repeatedly trespass on any Mans Rights with no consequences. Then this court is effectively creating a policy that said persons have an alleged title of nobility and are not subject to the Law and this alleged immunity is being unconstitutional applied to Plaintiffs Complaint and it is treasonous.

Point 3

Defendant was in an administrative role

21. The function that Defendant was performing was strictly administrative and not judicial. The function that Defendant was exercising was as an employee or agent acting administratively for the State of New York Department of Motor Vehicles, since all the alleged charges against Plaintiff were all related to vehicle and traffic. Defendant was not acting in the office of Justice or even entitled to perform any of the official duties of the office of justice, therefore judicial immunity is inapplicable in this particular instance.

22. All “judicial power” of the “inferior courts” comes from the Judiciary Act of 1789.

“Judicial power” comes from Article III, Section 2 of the Constitution of the United States of America. The Eleventh Amendment removed all “judicial power” in law, equity, treaties, contract law. Plaintiff specifically asked Defendant if Plaintiff was in a criminal or civil court. Defendant responded to the effect “neither”. See Exhibit 5. With regard to this matter Defendant was not acting in any judicial role or exercising any authority of a judicial office, but merely implementing policies and procedures of an agency of this state not the state while enforcing this state’s statute.

23. It is impossible for an officer to violate the Law since the moment the officer performs an unlawful act or refuses to perform an act which is required he has violated his oath and is not operating within the limited of delegated authority and at that moment he ceases to be a officer and is acting independently without the office and any of its protections.

“There are no judicial courts in America and there has not been since 1789. Judges do not enforce Statutes and Codes. Executive Administrators enforce Statutes and Codes. There have not been any Judges in America since 1789. There have just been Administrators.” (FRC v. GE 281 US 464, Keller v. PE 261 US 428 1Stat. 138-178)

Point 4

Plaintiff’s Right to be secure in his person against unreasonable seizure is being violated

24. The Fourth Amendment to the Constitution of the United States of America states:

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

25. In order to be compliant with the Constitution and for the people to exercise their Right to be secure in their persons against unreasonable seizure no warrant shall issue but upon probable cause supported by oath or affirmation. To have probable cause each and every element of the alleged violation must be supported by oath or affirmation.

26. It is clear from the appellate court’s decision that the Defendant acted in the absence of all jurisdiction regarding the alleged charge that Plaintiff was restrained in his liberty for.

The appellate court has determined that the instrument was jurisdictionally defective so it could not invoke the court jurisdiction, therefore the matter it is void.

27. Plaintiff is entitled to be made whole again which includes but is not limited to declaratory relief and if declaratory relief is not available then injunctive relief. By granting summary judgment when Plaintiff has stated a valid cause of action because the court is apply a doctrine or policy of judicial immunity is repugnant to the Constitution and treasonous. It effectively is subverting the Constitution and making it have no standing or authority. The Constitution doesn't say the Right of people to be secure in their person UNLESS if the bogus warrant is issued by a judge. The framers of this amendment could not have meant to exempt judges since that is the class that the amendment was specifically directed toward since judges are the ones whom warrants originate from.
28. By this court granting summary judgment it is effectively creating a class of persons who are above the law; that they effectively have a title of nobility, and these persons effective are "untouchable" whether they have color of title and even are not entitled to perform the official duties of the office, just by the mere fact they claim title.

Point 5

Plaintiff's Right to not be placed in Involuntary Servitude is being violated

29. Plaintiff has the Right to be left alone as long as Plaintiff does not trespassing on the Rights of another man. No man has the Right or authority to require Plaintiff to follow his commands as long as Plaintiff is not trespassing on the Rights of another man. Likewise a group of 2, or 4, or 100, or 20,000 men do not have the Right or authority to require Plaintiff to follow their collective commands.
30. A body politic such as a village, town, county, or state, etc is nothing more than a group of men who have gathered for a common purpose. These body politics are effectively corporations. These corporate body politics do not have the Right or authority to require Plaintiff to participate in it. Additionally these corporate body politics do not have the Right or authority to require Plaintiff to follow its collective commands.

31. The commands of these body politics are enumerated through rules, codes, and statutes and may provide for fines, penalties and often restraints in liberty for violations of actions it has not authorized or strictly forbids. These rules, codes, and statutes from the corporate body politics are not Laws but are private “rules” which attach to offers of “civil contracts”. These “rules” only become requirements (so called “laws”) which must be followed when one voluntarily requests the benefit of one becoming a member of that corporate body politic.
32. In order for there to be a requirement to follow these rules, codes, and statutes which are the “commands” of the body politics one must knowingly, willing, and intentionally volunteer to be a member of the body politic. The courts have ruled that only Plaintiff can determine Plaintiff’s political status. If the body politics are forcing Plaintiff be a member against his will and enforcing its private rules, code and statutes against him these corporations are acting without any authority. If these corporate body politics are enforcing its private rules, code and statutes with its associated penalties against Plaintiff without Plaintiffs consent to voluntarily become a member of the body politic it clearly amounts to Plaintiff being placed in involuntary servitude and Plaintiff specifically object and does not consent to it. Plaintiff has not been duly convict of a crime and has not voluntarily preformed any act to participate in the body politic THE UNITED STATES, THE STATE OF NEW YORK, THE COUNTY OF GENESSEE, THE TOWN OF BERGEN, etc.
33. These “body politics” have granted some of its officers, agents, and employees who are enforcing its policies with specific immunities for their participation in handling the “business” needs of the body politic. This immunity can only apply to others member of the body politic that have a nexus with it and have voluntarily waived Rights for the benefit of participation in the body politic. Additionally this immunity would only apply in actions brought within the so called “judiciary” of this body politic. The so called “Judiciary” of the body politic is not part of the judicial branch of the Government that was created by the Constitution of the United States of America by Article III.

34. Plaintiff believes that the signature act of voluntarily registering to vote would constitute a waiver of certain Rights for the benefit of having the participation of one vote in the affairs of a corporate body politic. Plaintiff believes that with this waiver of Rights a voter is then given privileges and immunities (which may be referred to as “rights”). This is why plaintiff has not voluntarily consent to be a member of these corporate body politic or corporations which are acting as government for those that consent.
35. The Constitution of the United States of America guarantees men the unlimited right to contract, which likewise includes the Right not to contract. It is this Right that would allow a Man to volunteer or contract into servitude, and as long as it is voluntarily which is knowingly, willingly, and intentionally there is no wrong, trespass, or Constitutional violation. However in this particular instance Plaintiff specifically states he has never done so.
36. This court has pointed out the Defendant has failed to respond to Complaint items 1, 11, 13, and 16. Therefore the Defendants have acquiesced to these material facts and are barred from disputing those facts. These points are all vital to Plaintiff’s claim since without a nexus that Plaintiff has voluntarily, knowingly, willingly, and intentionally agreed to become a member of the corporate body politic and obey its requirements which can be more extensive than the delegated powers of the Constitution of the United States of America there exist no authority or nexus to Plaintiff who is a Man retaining all his Rights. One who has volunteered to become a member of the corporate body politic has traded Rights for benefits and privileges and has agreed to go with the will of the majority of the body politic versus the independent wishes of his wishes as a private man, as long as he is not trespassing on other Men’s Rights, this is what Plaintiff believes is a democratic body politic is.
37. It follows the fundamental ideal that a Man can do anything he wishes as long as he doesn’t trespass on the Rights of another Man. However if the Man has consented to become a member of the body politic he has voluntarily waived Rights for the benefit of participate in the body politic and received privileges and immunities from the body politic in return however these privileges and immunities emanate from the body politic

who is now the sovereign or source of the privileges and immunities and all rights, and authority is now derived from.

38. In this particular instance Plaintiff is a Man that has not voluntarily , knowingly, willingly, and intentionally waived any of his Rights and has not voluntary into servitude. He stands on the ground in the state of New York not THE STATE OF NEW YORK or The State of New York. Additionally Plaintiff has not become a member of the corporate body politics that are acting as governments. Therefore requiring Plaintiffs to participate and requiring Plaintiff to comply with their private rules, codes, and statues places Plaintiff in involuntary servitude. Plaintiff has the Right and wants to be left alone and has not trespassed on the Rights of any other Men. Plaintiff believes he is being placed in involuntary servitude against his will and in violation of his unalienable rights which are Constitutionally secure. Plaintiff believes that all members of these corporate body politics which have taken a oath to the body politics and the United States are bond to act within the constraints of the Constitution of the United States of America as all rights to exists as legal entities originate under said Constitution and it is the source of authority for them to exist.

Point 6

Plaintiff is being denied the Right to Petition for redress of grievances

39. The First Amendment of the Bill of Right to the Constitution of the United States of America states:

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

40. This court has dismissed Plaintiffs Complaint on the grounds of judicial immunity where Plaintiff has stated a valid cause of action and requested relief in the form of injunctive, declaratory, and to be made whole again. By this court refusing to allow Plaintiff's action to precede Plaintiff is effectively being denied the Right to petition for redress of grievance for Defendants trespassing on Plaintiffs Rights by restraining him in liberty within the state for multiple days when there was not a jurisdictionally sufficient instrument.

41. The appellate court has ruled the charging instrument was jurisdictionally defective to invoke the court's jurisdiction and Defendant has failed to appeal said decision. The decision and or policy of this court is effectively making the Bill of Right to the Constitution of the United States of America have no standing or authority. The decision that a Man may be denied a redress for a trespass of Rights because the trespasser allegedly holds a title and is therefore immune from action is repugnant to the Constitution of the United States of America and effectively creates a title of nobility and denies Plaintiff the remedy.
42. Furthermore it is clear that the founding father never intended to create a class of people above the Laws since that was what they had just fought the Revolutionary War to escape from and had specifically barred titles of nobility in the Constitution. This court's decision dismissing Plaintiff's action on the grounds that Defendant is immune has the effect of creating a class of persons which is above the Law. This court is unconstitutionally apply immunity to the Plaintiff's Complaint in this particular instance, and turning the Right to petition for redress of grievance into a privilege as long as the Defendant isn't anyone whom the court has decided is above the law due to an alleged title of nobility.
43. Plaintiff believed he has filed his redress of grievance with the Government in the form of a Complaint in the "district court of the United States". Plaintiff questions if it is possible that the Complaint is not filed with the Government but rather some legal entity acting as Government that is outside the limitation of the Constitution of the United States of America. If so then the decision would be void as Plaintiff has no nexus that he knowingly, willing, or intentionally executed to submit to its jurisdiction and there exists no nexus to have any interaction with him and the action should be remanded to the correct forum to provide Plaintiff relief that he is entitled to.

Point 7 Denial of Due Process

A. Plaintiff is being denied due process to vigorously prosecute this case

44. Plaintiff contacted this court clerk's office prior to the filings of this and another case and was told words to the effect that this court was the "district court of the United States"

created by Article III of the Constitution of the United States of America. Plaintiff believes he has filed this action and a somewhat related case “Wik v Swapceinski” Case #11-CV-6220-CJS in the “district court of the United States”.

45. In the above referenced case (Wik v Swapceinski) Plaintiff questioned what court the action was being heard in since all the documents and correspondence was titled from the “United States District Court”. Furthermore Order and Decisions were being signed by a judge titled as a “United States District Court Judge”. Plaintiff turned in a Memorandum of Law regarding the difference between the “district court of the United States” and the “United States District Court” including but not limited to the venue and jurisdiction.
46. This court issued a Decision and Order to the effect that if Plaintiff continued with these types of argument that “ALL” his cases would be dismissed. Plaintiff believes that the reference was to the difference of the “district court of the United States” and the “United States District Court”. This Decision and Order has placed Plaintiff in a position that he cannot vigorously assert all his points to prosecute this case and other cases without fear of having ALL of his cases dismissed for vigorously and belligerently prosecuting said actions. Plaintiff would have appealed this court’s decision dismissing the action in Wik v. Swapceinski if he hadn’t feared this court dismissing ALL his cases for doing so.
47. Plaintiff does not believe this point to be frivolous as other courts including but not limited to courts higher than this one have addressed the difference between the status of the parties and subjects that each venue has jurisdiction over. This court has failed to provide any finding of fact or conclusion of Law but summarily dismisses the argument as “frivolous” to avoid addressing the material facts upon which liability exists. In this instant action this court has stated “*Federal district court is a correct court for bringing constitutional claims against State actors, such as a State judge.*” This statement uses the particular word “a correct court” it does not state “the correct court” and Plaintiff agrees that it may be “a court” court for certain actions, parties, and situations however Plaintiff does not know that it is “the correct court” that he has invoked in this particular instance, under these particular circumstances, and it may not be able to provide remedy for trespass of his violations as a Man.

48. Plaintiff has been told words to the effect that this venue is the “district court of the United States” and the “correct” court after notifying this court that Plaintiff believed the action was before the “district court of the United States” and that this court refuses to acknowledge any questing regarding what court that the matter is before, and it refuses to issue a finding of fact or conclusion of Law. Based on these circumstanced it has the appearance that deceit if not fraud may be being perpetrated against Plaintiff in the form of silence where there is a duty to respond and acknowledge the forum as Plaintiff may not be where he can assert his Rights a Man.
49. Plaintiff request for clarification of the venue of the matter is not to be disruptive but to insure that he is before the proper court that has jurisdiction to hear the matter, can hear actions involving a Man Rights, that it is the court that Plaintiff as invoked, and that Plaintiff is not voluntarily submitting to a venue or forum that is foreign to Plaintiff, and that the matter is being heard in the court in which the action was believed to filed. By Plaintiff not being allowed to bring all the points forward that are material to his cause of action and to build the record for appeal which are necessary to properly prosecute his action he cannot vigorously prosecute the case without fear of having all his actions dismissed and is being denied due process.

"Silence can only be equated with fraud where there is a legal or moral duty to speak, or where an inquiry left unanswered would be intentionally misleading. . . U.S. v. Tweel, 550 F.2d 297, 299. See also U.S. v. Prudden, 424 F.2d 1021, 1032; Carmine v. Bowen, 64 A. 932.

"Fraud destroys the validity of everything into which it enters," Nudd v. Burrows, 91 US 426; NUDD v. BURROWS, 91 US 426 (1875)

B. Plaintiff is being denied due process by the appearance of bias and prejudices

50. Since the initiation of this action this Court has constantly referred to the Defendant as a Judge or Justice of the Town of Bergen Court. This is a material fact in dispute and Plaintiff has alleged that Defendant isn't titled to posses the office or entitled to perform any of the official duties of the office. This court is highly trained in the law and is aware that just by possessing a title under possible color of law it does not entitled Defendant to perform the official duties of the office until various actions have been completed in

compliance with the laws of the state. The laws of the state of New York are clear on the matter as what is required prior to being entitled to perform the duties of the office and Defendant lacks those such requirements. See Exhibit 4. Even though Defendant may be cloaked with the color of title he has not been delegated the authority to perform the official functions of the office pursuant to the laws of the state of New York.

51. By the court referring to Defendant as a Judge, Justice and/or Honorable since the onset of this action it has the appearance of bias and prejudice that this court has already made a determination of Defendants status prior to any evidentiary hearing or filing of evidence, and that Plaintiff's action is doomed before it he has had notice and opportunity to prosecute his case. By Defendants counsel and this court repeatedly referencing Defendant as a Justice is does not magically transform Defendant into an officer under the state entitled to perform the official duties of the office.

C. Plaintiff is being denied due process by not being allowed discovery to obtain evidence in an admissible form to overcome summary judgment and be able to prosecute the case

52. Plaintiff has not been allowed to conduct discovery in order to obtain evidence in an admissible form to overcome summary judgment. Plaintiff has disputed the so called affidavit of Michelle Smith for several reasons including but not limited to the fact that there are no documents to support Smith's conclusionary statements except for an oath card. An oath card only does not title Defendant to an office or entitle Defendant to perform the official duties of the office. Based on the Complaint and the Order and Decision of the appellate court it is clear that Plaintiffs Rights have been trespassed upon. Smith's document is the only document provided in support of Defendants Motion for Summary Judgment. Smith lacks firsthand knowledge of most of the statements, has never been delegated the authority to make the determinations that she has present in her document, and her statements are not of facts but are conclusionary.
53. Given the opportunity to conduct discover Plaintiff is confident that he can obtain admissible evidence that Defendant was not acting in any judicial function, and was not

titled and/or entitled to perform any of the official duties of the office of Bergen Town Court Justice.

54. Plaintiff asserts that if the claims he has made regarding Defendant are true, that Defendant is not entitled to perform the official duties of the office and is merely acting as an employee, then for similar if not the same reasons Smith would not be entitled to perform any of the official duties of the office of Bergen Town Clerk. In Smith's own document she states "That I am employed as the Bergen Town Clerk and Tax Collector in Bergen, New York." Plaintiff believes that this document was written by Defendants counsel and was specifically worded to not state she was an officer.
55. This court has stated that "...that issue was put to rest in the affidavit of Michelle M. Smith" referring to Defendant being elected however Plaintiff asserts Smith's document has open up more questions which requires Smith to be deposed. Contrary to what this Court has stated Smith does not determine who has been duly elected. This court further stated that "Plaintiff has submitted no evidence in admissible form to contradict Genesee County records showing that Judge Kunego is a duly appoint town Judge." Plaintiff does not know if this court is referring to some documents that Plaintiff has not been privy to and are not part of the record of this court, but the documents Plaintiff has provided from the Genesee County Clerk demonstrate Defendant is lacking the required documents to be a judge and entitled to perform the duties of the office. See Exhibit 4.
56. Plaintiff asks this court to clarify if this court is relying of documents and evidence that are not part of the record of this proceeding that Plaintiff has not had notice or opportunity to review.
57. It is improbable that Plaintiff can obtain evidence in an admissible form when this court is denying him discovery which is necessary to overcome summary judgment. Plaintiff has been denied the notice and opportunity to question Smith regarding here document or have her provide the documents that she is in custody of to support her stance. Plaintiff has been denied the basic function of discovery to obtain evidence in an admissible form.
58. Smith has made the conclusionary statement that the justices are covered under a blanket bond. However in order to be allowed to use a blanket bond the legislative body must

authorize its use. Smith has provided documents that demonstrate that the Board has never authorized the use of a blanket bond. Smith has provided Plaintiff with a copy of the insurance which she refers to as a blanket bond which clearly does not cover any justices of Bergen just the Town Clerk and Town Supervisors. See Exhibit 6. Plaintiff believes Smith has perjured herself and demands that this court investigate her actions and that her document be stricken from the record.

59. Smith has refused to provide a certified copy of the documents and all Plaintiffs is able to provide to this court is copies unless discovery is allowed. Plaintiff has been denied the basic fundamental function of discovery to obtain evidence in an admissible form to respond to Smith statements which are contradictory and need to be clarified in an evidentiary hearing

Point 8

Plaintiff believes the “Doctrine of Judicial Immunity” is effectively legislating from the bench to limit fellow judge’s liabilities violated his Rights

60. Plaintiff has studied the Laws of the state of New York and does not believe there are any Law applicable in the state of New York that exempts anyone that may at times allegedly hold the office of a judge or any other officer from actions which they take in the absence of all jurisdiction which trespass on a Man’s Rights. All officers are required to take an oath prior to entering any office of trust. The moment an officer violates his oath which is to obey the Constitutions he ceases to be an officer and is acting in his personal capacity. An officer can only act within his delegated authority because that is the condition that he was agreed to pursuant to the oath he has taken.
61. It is impossible for an officer to violate the Law since to be a officer he must act within his delegated authority within the Constitutions and the moment he acts in violation of these oaths he is no longer an officer but acting privately, and personally liable for such acts. Any such Law that grants immunity to a certain class of persons putting them above the Law would be repugnant to the Constitution of the United States of America and effectively make it have no standing or authority.

62. Plaintiff belief that the courts are implementing policies and doctrines which are not Laws in order to obtain unjust benefits for those that are associated with the courts. Plaintiff believes that by applying these polices and doctrines the court is effectively legislating from the bench to advance its wishes which benefit and protect the court and those associated with it.
63. Plaintiff has the burden of arguing that judicial immunity for acts or omissions without jurisdiction are a valid cause of action which are actionable against Defendant and make the Defendant liable before the same class of persons who such liability could be imposed upon in the future if Plaintiff is granted relief. Plaintiff believes that by the court determining this matter any decision which would involve it own liability there is a direct conflict of interest. Plaintiff is effectively being placed in the situation where this court is being allowed to rule on a matter which so directly affects its well being, protections, and liability. It is improbable that Plaintiff could get a fair trial on his cause of action.
64. It is clearly logical that the court would have a personal interest in a doctrine or policy that could protect itself from any potential actions whereby it could be liable. Plaintiff believes it is improbable that this court or any court can independently make a determination without the appearance of bias and prejudice. Plaintiff believes that not only is this court legislating its policies from the bench and not interrupting the Laws but that in this particular instance it is impossible for Plaintiff to obtain a fair and impartial decision before those that the decision directly affects. In this particular instance judicial immunity is being unconstitutionally being applied to Plaintiff to deny him a remedy when his Constitutionally secured Rights as a Man have been trespassed upon.

Point 11

Hierarchy of authority

65. In order to analyze the hierarchy of the delegation of sovereignty authority associated with the United States of America one must start with the Declaration of Independence which states

"We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty and the pursuit of Happiness. That to secure these rights,

Governments are instituted among Men, deriving their just powers from the consent of the governed."

66. The founding fathers thought Liberty was such an essential element of Rights that they specifically itemized it as an unalienable Right endowed by our Creator. They continued by stating that "to secure these rights, Governments are instituted among Men, deriving their just power from the consent of the governed." From this historical document it cannot be disputed that Governments were instituted to secure Men's Rights not to protect government officers, or any class of persons from actions, or protect the public perception. It must be noted that Government is not the source of Rights. Further it is evident that the hierarchy from the top down is the Creator, Men, and then Government.
67. Government is only allowed to operate within the powers delegated to it by Men who voluntarily consent, and it only has the limited authority granted to it voluntarily by Men. Persons which include but are not limited to individuals, corporations, and associates exists by permission of the government and operate under privileges and immunities not Rights. Courts have determined that a corporation may have its property taken without notice by the State and the reasoning is that a corporation owes its existence to the State; a corporation is merely a slave and the State is the master who allowed the corporation to come into existence and the master never has to ask permission from the slave to do anything. The courts additionally have ruled that Men and persons are not the same. The distinction can be seen through various documents and it must be observed that the word people is not the plural of person. The plural of person is persons.
68. The government that Men created was the United States of America. In turn the Government created entities including but not limited to corporations which operate under it. Any such corporations are subject to its creator and obtain any and all authority from it. One such entity created by the United States of America is the corporation the UNITED STATES, or USA, etc. The act of creating this corporation is well within the delegated authority of the Government and not unconstitutional in any manner as it was specifically done to handle the business needs of the Government, and is not intended to interact with Men.

69. Other such entities include but are not limited to THE STATE OF NEW YORK, THE COUNTY OF GENESEE, THE TOWN OF BERGEN, etc. The entity THE STATE OF NEW YORK which appears in the statutes as the “State of New York” is separate and unique to the “state of New York” and the laws specifically differentiate between the two and use distinguishing words such as “the state” and “this state”. In some sections the wording in the same sentence will differentiate between the two such as under the laws of the state of New York or the laws of this state. These entities and/or corporations are not specifically bound by the same constraints and limitations that Governments are and provide a means of Government to limit its liability. These entities were set up to deal with other entities and not Men. This practice of have corporations handle the business needs of body politics has trickled down all the way to the local level of villages.
70. While this court may wish to summarily dismiss Plaintiffs assertions that DANIEL J WIK and Daniel Joseph Wik are not the same; one must analyze history and realize that in 1935 the Social Security Act was passed creating the Social Security Administration, and investigate how government interaction with others was modified due to this “program”.
71. Based on Plaintiffs readings Plaintiff believe that the Social Security Act provided for a benefit offered by the Social Security Administration in which one could receive certain benefits for voluntarily participating in said program. However once one volunteered in said program certain duties thereafter applied to them and penalties could be attached for violations of said agreement.
72. Plaintiff believes that when one performs a signature act of volunteering to participate in the “general trust” as is referenced in the act. A trust is created that sounds like the man’s name but is spelled with all capital letters. Once the man has voluntarily requested participation in the plan a number for identification is assigned and a name which sounds like his but is spelled with all caps for example the man John A. Doe would be assigned a name JOHN A DOE and assigned a tracking number 123-45-6789. Legal entity lacks consciousness and physical capacity to do anything therefore the man John A Doe would thereafter act in a capacity such as trustee providing consciousness and physical capacity

for that entity, but the man is separate from the entity. Such as a Man can at times be acting on behalf of a Man at other times he may hold for office of Trustee of the Trust.

73. When he is performing the functions of Trustee he is protected by the Corporate Sole nature of the office, and cannot be held liable for the acts as a Man as long as he acted within his delegated authority of the trust indenture.
74. This would match many legal documents that involve micro printing on what most people believe is a line but in reality is the text to the effect of authorized signature. The trust JOHN A DOE is not a man and does not have Rights but may have privileges and immunities that are delegated to it by its creator the Social Security Administration which was created by the corporate entity the UNITED STATES. This trust could be referred to as a person within the meaning of the statues, but is not a man. Since a trust lacks Rights its actions can be regulated and controlled by statues and codes and its actions are not the actions of the man. Almost all statutes rules and code forbid "persons" from certain acts and never forbid Men, because these corporate body politics have no authority to interfere with Men.
75. When dealing with entities the need for "judicial" court is done away with and may be replaced by administrative or legislative tribunals because such entities do not require "judicial courts" since these entities lack Rights such as Men have. These administrative or legislative tribunals handle the privileges and immunities of entities.
76. Plaintiff believes this to be a very simple and short explanation of the difference between Daniel J. Wik and DANIEL J WIK and the concept that one has Rights and the other privileges and immunities. In turn this would further explain why Plaintiff has questioned if he is in the "correct" court meaning a "judicial court" verses an inferior administrative or legislative tribunal.
77. To tie the points together the entities THE STATE OF NEW YORK, THE COUNTY OF GENESEE, THE TOWN OF BERGEN only have the authority to regulate and interact with the entities such as the trust DANIEL J WIK and not the man Daniel J. Wik.

78. By these previously mentioned entities restraining the Plaintiff who is a man in his liberty within the state they acted without right, authority, or jurisdiction and have trespassed on Plaintiff's Constitutionally secured Rights.
79. Therefore Defendant cannot invoke any form of immunity from the trespass of the Plaintiffs Rights as a Man in a "judicial court".
80. While this court has referenced the "quality" of Plaintiff's pleadings, the status of Plaintiff is a material fact that must be know in order to apply the Law, and also must be analyzed in order to determine in what venue the action is to be heard. While the court has stated words in the past that a Plaintiff cannot challenge the jurisdiction of the court because a plaintiff has voluntarily submitted himself to such jurisdiction, Plaintiff disagrees if it is based on fraud or error. Plaintiff has titled the action as "district court of the United States" which plaintiff believes invokes an Article III court as set by the Constitution of the United States of America.

Point 8

Plaintiff is effective being denied a remedy

81. The policy that this court is applying effectively denies Plaintiff any redress of grievance against the one responsible for the trespass on his Rights and outright denies him a remedy. Plaintiff cannot be secure in his person against unreasonable seizure. The policy allows Plaintiff to be restrained in his liberty at any time by anyone alleging to be a judge or perform a function normally performed by a judge and if Plaintiff is lucky enough he will be released of the unlawful restraint but he cannot be made whole again in an action for trespass as judicial immunity would apply. If this is the case Plaintiff had no remedy and has been place in involuntary servitude and the Constitution of the United States of America and its limitations on government has no meaning, standing, or authority, provides no securing of Plaintiffs Rights and anarchy is active and the one with the most power and the largest arsenal of strength, leverage, and weapons can do whatever it so wishes. If there exists no remedy for Plaintiff this court has a duty to create one.

Conclusion

82. Plaintiff is not only being denied to be made whole again for his restraint in liberty but is further being denied declaratory and injunctive relief. What this court is effectively holding is that there exists a class of persons who have absolute immunity for any action no matter if their conduct is strictly prohibited by the Constitution of the United States of America.

83. Any man who has had his Rights violated by an alleged judge under the doctrine of absolute judicial immunity will not be allowed to petition for redress in the form of compensation for their trespass, declaratory relief that their rights were trespassed on, or injunctive relief to bar further trespass. The concept is utterly repugnant to the Rights secured by the Constitution of the United States of America. A decision of this nature allows an alleged judge to continue to trespass on Men's rights with the assurance that they are "untouchable"; this concept is treasonous.

84. This court is allowing Plaintiff Rights to be encroached upon and Constitutional secured Rights to circumvented in a stealthy manner as to invalid the Constitution of the United States of America and Bill of Rights.

85. This court's Decision and Order circumvents the Constitution leaving Plaintiff with no remedy, this doctrine is being unconstitutional as applied to the Plaintiff, a man, and is repugnant to the Constitution of the United States of America.

"It is the duty of the courts to be watchful for the Constitutional rights of the citizens and against any stealthy encroachments thereon." Boyd v United States, 116 US 616

"Disobedience or evasion of a Constitutional Mandate cannot be tolerated, even though such disobedience may, at least temporarily, promote in some respects the best interests of the public." Slote v Examination, 112 ALR 660

Relief

Plaintiff requests and is entitled to an order clarification of the follow matters:

Clarification

86. Is this court the "district court of the United States"?

87. Is this a judicial court under Article III of the Constitution of the United States of America?

88. If not is this a legislative or administrative court?

89. Does this court have the jurisdiction to hear a Man's claim for trespass of his Rights secured by the Constitution of the United States of America?
90. What is meant by the courts statement if its October 9, 2012 order by the statement "The foregoing is fairly representative of the nature and quality of the grievances that Plaintiff has direct at Defendant."?
91. Does The State of New York have the right and authority to enforce it's private codes, rules, and regulation on a private man.
- Plaintiff further requests and is entitled to an order:**
92. Reversing its October 9, 2012 Decision and Order dismissing Plaintiff's Complaint with prejudice; and
93. Ordering an evidentiary hearing to determine if Defendant was in a judicial capacity and in fact is entitled to perform the official duties of the office of Bergen Town Court Justice; and
94. Granting Plaintiff the opportunity to have discovery to obtain evidence in an admissible form to overcome summary judgment and prosecute the action against Defendant.
95. If this court will not allow Plaintiff to challenged Defendants titlement and inquire into if Defendant is entitled to perform the official duties of the office Plaintiff requests leave of this court to file a Quo Warranto in the state against Defendant before this order becomes finial.

Dated November 7, 2012
Rochester, New York
United States of America

Daniel J. Wik



Plaintiff without representation,
in propria persona
c/o non-domestic
659 Averill Avenue; near:
Rochester, New York
(585)-957-5902

Verification

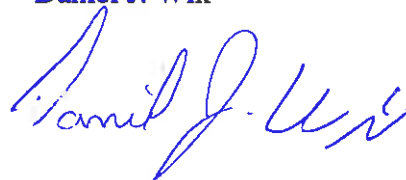
New York State)
) solemnly affirming and subscribing
Monroe County)

I, Daniel J. Wik, Your Affiant, in my own proper natural self do solemnly affirming, according to law that the contents herein are true, correct and complete, and I affirm and verify that:

1. Your Affiant is over twenty-one years of age and is competent to testify.
2. Your Affiant has specific and personal knowledge of each of these events and of the facts as noted in said Affirmation in Support of Motion to Reconsider/Clarify/Objection.
3. The contents of this Affirmation in Support of Motion to Reconsider/Clarify/Objection are true and correct to the best of Your Affiant's ability.

Respectfully Presented on November 7, 2012

Daniel J. Wik



Affirmed to before me this
7 day of November, 2012.



JANICE L. VANHOUTER
NOTARY PUBLIC, STATE OF NEW YORK
QUALIFIED IN LIVINGSTON COUNTY
REG. #01VA6048548
MY COMM. EXP. SEPT. 25, 2014

Exhibit 1

Exhibit 1

COPY

STATE OF NEW YORK
 COUNTY OF Genesee
 TOWN/VILLAGE/CITY COURT OF Bergen

SECURING ORDER
 DOCKET # 10070055
 DATE OF BIRTH 01/07/1972
 NYSID # _____

The People of the State of New York

v.

Daniel J. Wik, Defendant

The above named defendant having appeared before the undersigned on a (ACCUSATORY INSTRUMENT)/ (WARRANT), charging the defendant with the most serious offense of UNLIC OPERATION in violation of Section 0511 02A2 of the VTL Law a (Class _____ Felony/Misd) (Violation) (Infraction)

AND (Check one box only)

☒ further court attendance being required on the 22nd day of September 2010 at 5:00PM before the Bergen Town Court

OR ☐ the matter having been transferred for action of the Grand Jury

Now therefore, it is **ORDERED** that the defendant be

☐ **RELEASED** (Check one box only)

☐ on bail fixed in the amount of \$0.00 and received by this Court;

OR ☐ Other (Explain) _____

OR ☒ **REMANDED** to the custody of County Sheriff/Commissioner of Correction until his appearance is required as set forth, (Check one box only)

OR ☒ until bail is posted in the amount of \$1500.00 CASH OR \$1500.00 Property _____

OR ☐ until bail in an amount fixed by a Superior Court has been posted. Specify Type _____

OR ☐ without bail

AND that this ORDER includes the lesser offense(s) of: _____

SPECIAL ORDERS/INSTRUCTIONS

- ☐ CPL 730 (competency) Exam ordered (UCS#16-A Attached)
☐ Local Mental Health Referral
☐ Additional Comments _____

DATED: JUL 27 2010

Hon. Donald R. Kunego, T.J.
10 Hunter St. POB Box 249
Bergen, NY 14416
 (Hon. Donald R. Kunego)

(JUDGE OR JUSTICE SIGNATURE)

RELEASE INFORMATION

It is hereby ORDERED that the defendant (Check one box only)

☐ be released from custody having been **CONVICTED** of the most serious offense of _____ in violation of Section _____ Sub Div _____ of the _____ Law a (Class _____ Misd) (Violation) (Infraction) **AND SENTENCED TO TIME SERVED**

OR ☐ be released from custody (OTHER)

DATED: _____

(Hon. Donald R. Kunego)

(JUDGE OR JUSTICE SIGNATURE)

GCJ-35

GENESEE COUNTY JAIL
P.O. Box 151
Batavia, NY 14021-0151
(585)343-0838

AUG 05 2010

balk

Bail/~~Fine~~/~~Surcharge~~ Receipt and Undertaking

(COUNTY OF GENESEE:)
(TOWN/CITY/VILLAGE OF Bergen : COUNTY COURT) CPL Section 520.15

People of the State of New York

vs.

Daniel Wik
Defendant

659 Averill Ave.
Street Address

Rochester, NY 14607
City/State/Zip

I, Christian, Valentine, am posting cash/bail/~~fine~~/~~surcharge~~ in the total amount of \$ 1500.00 on behalf of (~~myself~~), the Defendant in this case who was arrested by Trooper Pitz of the New York State Police Department and who is presently being held at the Genesee County Jail on the charge(s) of :

LAW	SEC	SUB.	OFFENSE	BAIL	FINE	SURCHARGE	CH.#'S
VTL	05.11	-	A00 2nd	1500 ⁰⁰	-	-	10-842

with the defendant scheduled to appear before Judge Kunego in the said (Town/City/Village/County Court) to be held at Bergen town Court on the 20th day of September, 2010, at 5:00 (~~a.m.~~/p.m.) to answer the charge(s) and there to remain subject and amenable to any orders or processes of the Court.

And if (he) (~~she~~) (~~it~~) fail to perform as ordered and remain subject and amenable to any orders or processes of the Court, until this case is finally disposed of, then I hereby acknowledge that the cash bail will be forfeited to the Court. That is if the Defendant does not comply with any requirement, order or process to appear, the bail will be forfeited to the Court. I will then be unable to claim return of the cash bail from the Court.

I acknowledge that the POUNDAGE FEE of 3% of the bail posted here in WILL BE DEDUCTED from said bail at the time of refund or forfeiture, unless the action is terminated in favor of the defendant pursuant to CPL 160.50

Date: 7/30/10

x [Signature]
Obligor's Signature

[Signature]
Officer Witness

PO Box 151 585-781-4444
Address Phone Number
Churchville, NY 14428

(Forward Remittance to : Kunego Bergen)
Judge Town/City/Village/County

White: Court Copy Yellow: Obligor's Copy Pink: Defendant's Copy

Exhibit 2

Exhibit 2

COPYSTATE OF NEW YORK
GENESEE COUNTYBERGEN TOWN COURT
CRIMINAL PART

PEOPLE OF THE STATE OF NEW YORK

VS.

DANIEL J. WIK; dob: 01/07/1972, Defendant

CASE NO: 10070055

Bench WarrantTo Any Officer of:
NEW YORK STATE POLICE
4525 West Saile Drive
Batavia, NY 14020

Original Charge(s)

Amended Charges(s)

VTL 0511 02A2 UNLIC OPERATION

Fail To Appear Date: 10/20/2010 Time: 04:00PM

The above named defendant failed to appear for a scheduled court appearance on the date shown above and has previously been arraigned on the charges listed.

Therefore you are ordered to arrest the above named defendant and bring that person before this Court.

This warrant may be executed in Genesee County or any adjacent county.

October 20, 2010
Date

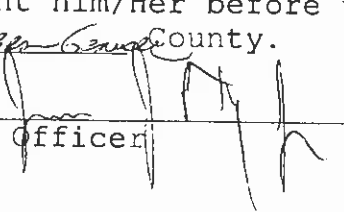

Judge Donald B. Kunego .

[SEAL]

On the 16 day of November, 2010, a police officer authorized to execute the above Warrant, arrested the defendant in the County of Genesee and brought him/her before the Town Court in Town of Genesee County.

NYSP
Department

TPR.

Officer 

GCJ-30

GENESEE COUNTY JAIL
P. O. Box 151
Batavia, NY 14021-0151
(585)343-0838

COPY**Bail/Fine/Surcharge Receipt and Undertaking**

(COUNTY OF GENESEE:)

(TOWN/CITY/VILLAGE OF Bergen : COUNTY COURT) CPL Section 520.15

People of the State of New York

vs.

Daniel J. Wilk
Defendant

659 Averil Ave
Street Address

Rochester NY 14607
City/State/Zip

I, Valentine Christian, am posting cash/bail ~~fine/surcharge~~ in the total amount of \$2,500.00 on behalf of (~~myself~~), the Defendant in this case who was arrested by Trooper Hanssler of the New York State Police Department and who is presently being held at the Genesee County Jail on the charge(s) of :

LAW	SEC	SUB.	OFFENSE	BAIL	FINE	SURCHARGE	CH.#'S
VTL	0511	02A2	Agg unlicensed op 2nd	2500.00			10-1280

with the defendant scheduled to appear before Judge Kunego in the said (Town/City/Village/County Court) to be held at Bergen Town Court on the 15 day of December, 2010, at 4:00 (~~a.m.~~ p.m.) to answer the charge(s) and there to remain subject and amenable to any orders or processes of the Court.

And if ~~(he)~~ ~~(she)~~ ~~(I)~~ fail to perform as ordered and remain subject and amenable to any orders or processes of the Court, until this case is finally disposed of, then I hereby acknowledge that the cash bail will be forfeited to the Court. That is if the Defendant does not comply with any requirement, order or process to appear, the bail will be forfeited to the Court. I will then be unable to claim return of the cash bail from the Court.

I acknowledge that the POUNDAGE FEE of 3% of the bail posted here in WILL BE DEDUCTED from said bail at the time of refund or forfeiture, unless the action is terminated in favor of the defendant pursuant to CPL 160.50

Date: 11/17/10

[Signature]
Obligor's Signature

P.O. Box 151585-781-4544

Address

Churchville NY 14428

Phone Number

[Signature]
Officer Witness

(Forward Remittance to : Kunego T/Bergen)
Judge (Town/City/Village/County)

White: Court Copy Yellow: Obligor's Copy Pink: Defendant's Copy

COPY

STATE OF NEW YORK
 COUNTY OF Genesee
 TOWN/VILLAGE/CITY COURT OF Bergen

SECURING ORDER
 DOCKET # 10070055
 DATE OF BIRTH 01/07/1972
 NYSID # _____

~~The People of the State of New York~~

v.

Daniel J. Wik, Defendant

The above named defendant having appeared before the undersigned on a (ACCUSATORY INSTRUMENT)/ (WARRANT), charging the defendant with the most serious offense of UNLIC OPERATION in violation of Section 0511 02A2 of the VTL Law a (Class _____ Felony/Misd) (Violation) (Infraction)

AND (Check one box only)

☒ further court attendance being required on the 17th day of November 2010 at 4:00P before the Bergen Town Court

OR ☐ the matter having been transferred for action of the Grand Jury

Now therefore, it is **ORDERED** that the defendant be

☐ **RELEASED** (Check one box only)

☐ on bail fixed in the amount of \$0.00 and received by this Court;

OR ☐ Other (Explain) _____

OR ☒ **REMANDED** to the custody of County Sheriff/Commissioner of Correction until his appearance is required as set forth, (Check one box only)

OR ☒ until bail is posted in the amount of \$2500.00 CASH OR \$2500.00

OR ☐ until bail in an amount fixed by a Superior Court has been posted.

OR ☐ without bail

Property _____

Specify Type _____

AND that this ORDER includes the lesser offense(s) of: _____

SPECIAL ORDERS/INSTRUCTIONS

- ☐ CPL 730 (competency) Exam ordered (UCS#16-A Attached)
☐ Local Mental Health Referral
☐ Additional Comments _____

DATED: 11/14/10

Donald R. Kunego
 (Hon. Donald R. Kunego)

[Signature]
 (JUDGE OR JUSTICE SIGNATURE)

RELEASE INFORMATION

It is hereby ORDERED that the defendant (Check one box only)

☐ be released from custody having been **CONVICTED** of the most serious offense of _____ in violation of Section _____ Sub Div _____ of the _____ Law a (Class _____ Misd) (Violation) (Infraction) **AND SENTENCED TO TIME SERVED**

OR ☐ be released from custody (OTHER)

DATED: _____

 (Hon. Donald R. Kunego)

 (JUDGE OR JUSTICE SIGNATURE)

Exhibit 3

Exhibit 3

At a term of the County Court held in and for the County of Genesee, at the Court-house in Batavia, New York, on the 20th day of July, 2012.

26

PRESENT: HONORABLE MARK H. DADD
County Court Judge

STATE OF NEW YORK
COUNTY COURT: COUNTY OF GENESEE

FILED
GENESEE COUNTY CLERK
07/25/2012 03:48:44 P.M.

The People of the State of New York
Plaintiff-Respondent

DECISION and ORDER

v.

DANIEL J. WIK
Defendant-Appellant

The above-named defendant-appellant, having appealed to this Court from a judgment rendered in the Justice Court for the Town of Bergen on April 27, 2011, which convicted him of Unlicensed Operation of a Motor Vehicle in the Second Degree and Disobeying a Traffic Device, and said appeal having duly come on to be heard.

NOW, upon the notice of appeal, dated May 25, 2011, the affidavit of errors "solemnly affirm[ed] and subscrib[ed]" as true by the defendant on June 24, 2011, and upon the briefs submitted by the parties, and after hearing the defendant-appellant in support of his appeal and William G. Zickl, Assistant District Attorney, in opposition thereto, and due deliberation having been had, the following decision is rendered.

The defendant-appellant raises numerous arguments in favor of reversal of his convictions. The Court has considered them and finds that all of them lack merit with the exception that the claim that the Information charging the defendant-appellant with Aggravated Unlicensed Operation of a Motor Vehicle in the Second Degree motion was jurisdictionally defective.

On July 27, 2010, after stopping the defendant-appellant's vehicle on State Route 33, State Trooper James Pitz issued traffic tickets to the defendant-appellant citing him for committing the following offenses: Aggravated Unlicensed Operation of a Motor Vehicle in the

Second Degree, Speeding, Uninspected Motor Vehicle and Failure to Notify the Department of Motor Vehicles of a Change of Address. With respect to the misdemeanor charge of Aggravated Unlicensed Operation of a Motor Vehicle in the Second Degree, Trooper Pitz subsequently replaced the Simplified Traffic Information that he had originally filed with an Information (CPL §100.10[1]). On April 27, 2011, the defendant-appellant pleaded guilty by Alford plea pursuant to a plea agreement to the Information charging Aggravated Unlicensed Operation of a Motor Vehicle in the Second Degree. For this offense the court sentenced him to “time served” and a fine of \$500 with a surcharge of \$85. The defendant-appellant also pleaded guilty by Alford plea to the traffic offense of Failure to Obey a Traffic Control Device to satisfy the Simplified Traffic Information charging him with Speeding – which was amended by agreement to permit the plea to this charge. For this offense, an additional fine of \$150 and surcharge of \$85 was imposed. All of the other charges were dismissed pursuant to the plea agreement.

An Information contains an accusatory part, which “must designate the offense or offenses charged,” and a factual part, “alleging facts of an evidentiary character supporting or tending to support the charges” (CPL §100.15). To be facially sufficient, the factual allegations in the factual part, augmented by the factual allegations contained in any accompanying supporting depositions, must “provide reasonable cause to believe that the defendant committed the offense charged in the accusatory part of the information” (CPL §100.40[1][b]). Pursuant to CPL §100.40(1)(c), the factual part and/or the supporting depositions must also contain “[n]on-hearsay allegations [which] establish, if true, every element of the offense charged and the defendant’s commission thereof,” but this requirement has been held to be not jurisdictional and to be waived by a guilty plea (People v. Jackson, 18 N.Y.3d 738, 741-742 [2012]; People v. Konieczny, 2 N.Y.3d 569, 575 [2003]). The “reasonable cause” requirement, on the other hand, is jurisdictional and survives a guilty plea (Jackson, *supra*; People v. Dreyden, 15 N.Y.3d 100 [2010]).

Thus, “[a]n information is valid for jurisdictional purposes if it contains nonconclusory factual allegations that, if assumed to be true, address each element of the crime charged, thereby affording reasonable cause to believe that defendant committed that offense”

(Jackson, supra, 741). Absent such factual allegations, an Information is invalid and jurisdictionally defective due to facial insufficiency.

All degrees of the crime of Aggravated Unlicensed Operation include a mental element which distinguishes it from the Traffic Infraction of Unlicensed Operation (Vehicle and Traffic Law §509[1]). To be guilty of Aggravated Unlicensed Operation, a driver must operate a motor vehicle “while knowing or having reason to know” that his or her license or privilege to drive in New York had been suspended, revoked or otherwise withdrawn (Vehicle and Traffic Law §511[1][a]). Therefore, since this mens rea is an essential element of the offense, a sufficient Information charging Aggravated Unlicensed Operation must contain nonconclusory factual allegations which, when assumed to be true, provide reasonable cause to believe not only that the defendant operated a vehicle without a valid license, but that the defendant did so knowing, or having reason to know, that his or her license had been suspended, revoked or withdrawn (People v. Austin, 2011 N.Y. Slip Op. 52402(U), 946 N.Y.S.2d 68 [N.Y. Sup. App. Term., decided Dec. 27, 2011]; People v. Cawley, 2011 N.Y. Slip Op. 51334(U), 930 N.Y.S.2d 176 [N.Y. Sup. App. Term., decided July 15, 2011]; People v. Brown, 2007 N.Y. Slip Op. 51129(U), 841 N.Y.S.2d 821 [N.Y. Sup. App. Term., decided June 5, 2007]; see also, People v. Pierre, 157 Misc.2d 812 [N.Y.City Crim.Ct. 1993]; People v. Acevedo, 27 Misc.3d 889 [N.Y.City Crim.Ct. 2010]; People v. Ham, 265 A.D.2d 674 [3rd Dept., 1999]; People v. Pacer, 6 N.Y.3d 504 [2006]).

In the defendant-appellant's case, the Information charging him with Aggravated Unlicensed Operation in the Second Degree contains no factual allegations at all addressing whether he knew or should have known that he lacked a valid license to drive. It states only that on July 27, 2010, he “did operate NY Reg. ECY-2267 on a public State Highway SR 33 in the Town of Bergen with three suspensions on three separate dates”— then listing the dates and jurisdictions which imposed those three suspensions. Contrary to the contention of the People, it is not enough that the Information alleges that the defendant-appellant committed the offense “knowingly.” In context, this adverb is entirely conclusory, adding no factual detail upon which a finding of reasonable cause could be based. In addition, although the Court recognizes that it must not give the Information an “overly restrictive or technical reading” when the assessing

People v. Daniel J. Wik

-4-

Decision and Order

its facial sufficiency (People v Casey, 95 N.Y.2d 354, 360 [2000]; People v Kalin, 12 N.Y.3d 225, 230 [2009]), a fair reading of its language finds nothing to indicate that the adverb "knowingly" is intended to refer to the circumstance of the defendant-appellant having received three license suspensions, as opposed to merely his conduct in operating the vehicle (see Penal Law §15.05[2]). As such, the Information does not succeed in alleging the required mental element. It fails to alert the defendant-appellant to the fact that he is accused not merely of driving while happening to have three suspensions on three separate dates, but that he is accused of doing so with knowledge that he had no valid license or privilege to drive a motor vehicle in New York. As a consequence, since it lacks an allegation of the mental element of the offense charged, the Information fails to give the defendant-appellant notice sufficient to prepare a defense (Kalin, supra).

Accordingly, the Court finds that the Information charging the defendant-appellant with Aggravated Unlicensed Operation of a Motor Vehicle in the Second Degree is facially insufficient and jurisdictionally defective.

NOW, THEREFORE, it is hereby

ORDERED and ADJUDGED that the defendant-appellant's conviction upon the traffic offense of Failure to Obey a Traffic Control Device, and the fine and surcharge imposed therewith, are affirmed; and it is further

ORDERED and ADJUDGED that the defendant-appellant's conviction upon the misdemeanor charge of Aggravated Unlicensed Operation of a Motor Vehicle in the Second

Genesee County Clerk's Office
STATE OF NEW YORK

I, Don M. Read, Clerk of the County of Genesee, of the County Court of said County and The Supreme Court, both being Courts of record, having a common Seal, do hereby certify that I have compared the copy of the DECISION AND ORDER

_____ hereunto annexed with the original

FILED _____ in this office ~~XXXX~~ ON JULY 25, 2012

_____ and that the same is a correct transcript therefrom and of the whole of said original DECISION AND ORDER

In Witness Whereof, I have hereunto set my hands and affixed the official seal of said county at Batavia, this 5TH day of NOVEMBER 2012

DCN M. READ Clerk

Mary C Jensen Deputy Clerk

Exhibit 4

Exhibit 4

GENESEE COUNTY CLERK
DON M. READ

~ FREEDOM OF INFORMATION RESPONSE ~

To: Daniel Joseph Wik

From: *Don M. Read*

Re: FOIL Request

Date: September 24, 2010

In response to your Freedom of Information Request for:

"A copy of the records, documents, and/or certificate issued by the Genesee County Clerk and filed in the office of the executive department of the state showing the name each person so elected or appointed within the county who has duly qualified as is required by County Law 400(5) for the years 2005 to present."

Please be advised that this office has not filed any such record, document or certificate with the Executive Department of the State of New York for the years of 2005 to present."

Name of Agency Responding: Genesee County Clerk
Mailing Address: P.O. Box 379, Batavia, New York 14021-0379

Respectfully submitted,

Genesee County Clerk's Office
STATE OF NEW YORK

I, Don M. Read, Clerk of the County of Genesee, of the County Court of said County and The Supreme Court, both being Courts of record, having a common Seal, do hereby certify that I have compared the copy of the COPY OF FREEDOM OF INFORMATION RESPONSE

_____ hereunto annexed with the original

FILED _____ in this office in Lib. XXXXX ON SEPTEMBER 24, 2010

XXXXX

_____ and that the same is a correct

transcript therefrom and of the whole of said original COPY OF FREEDOM OF INFORMATION RESPONSE

In Witness Whereof, I have hereunto set my hands and affixed the official seal of said county at

Batavia, this 5TH day of NOVEMBER, 2012

Don M. Read Clerk

Deputy Clerk

GENESEE COUNTY CLERK

Don M. Read

~ FREEDOM OF INFORMATION RESPONSE ~

To: James E. Richardson
15938 Roosevelt Hwy
Kendall New York 14476

From: Don M. Read

Re: FOIL Request

Date: August 18, 2010

In response to your Freedom of Information Request, dated 08-09-10 and received by this office on 08-17-10, please be advised that we do not have the document that you are requesting. [Justice Donald R. Kunego; Justice Robert Swapceinski & Justice William E. Kolmetz, Undertaking/Bond, bond amount, bond number, the bond holders name and address and the name and address of the claims adjuster.] However, if you wish to receive a certified copy of this information from the County Clerk there would be a charge of \$5.00.

Name of Agency Responding: Genesee County Clerk
Mailing Address: P.O. Box 379
Batavia, New York 14021-0379

Genesee County Clerk's Office
STATE OF NEW YORK

I, Don M. Read, Clerk of the County of Genesee, of the County Court of said County and The Supreme Court, both being Courts of record, having a common Seal, do hereby certify that I have compared the copy of the COPY OF FREEDOM OF INFORMATION RESPONSE

hereunto annexed with the original

FILED

in this office ~~XXXX~~ ON AUGUST 18, 2010

Page ~~XXXX~~

and that the same is a correct

transcript therefrom and of the whole of said original COPY OF FREEDOM OF INFORMATION RESPONSE

In Witness Whereof, I have hereunto set my hands and affixed the official seal of said county at

Batavia, this 5TH day of NOVEMBER, 2012

Clerk

Deputy Clerk

Exhibit 5

Exhibit 5

Affidavit of Valentine Christian

Valentine Christian affirms, deposes and says:

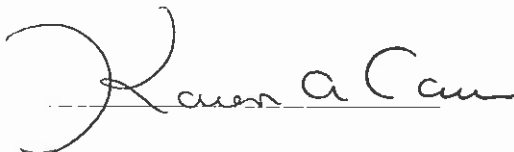
1. At a hearing regarding "The People of the State of New York v. DANIEL J WIK" at Bergen, New York Daniel Joseph Wik asked a question to Donald Kunego to the effect if he was in a criminal or civil court and Donald Kunego responded to the effect of neither.
2. At a hearing regarding "The People of the State of New York v. DANIEL J WIK" at Bergen, New York Daniel Joseph Wik made reference to the New York Criminal Procedure Law and Donald Kunego responded to the effect that those rules did not apply there.
3. At a hearing at matter regarding "The People of the State of New York v. DANIEL J WIK" at Bergen, New York Daniel Joseph Wik repeatedly asked a question to Donald Kunego to the effect if Donald Kunego was acting as an agent to the Department of Motor Vehicle and Donald Kunego would not answer.

Respectfully Presented on November 5, 2012


Valentine Christian

Affirmed to before me this

5 day of November, 2012.



KAREN A. CARR
Notary Public, State of New York
No. 01CA6252339
Qualified in Monroe County
Commission Expires December 5, 2015

Exhibit 6

Exhibit 6



EVIDENCE OF PROPERTY INSURANCE

DATE (MM/DD/YYYY)

10/27/2010

THIS EVIDENCE OF PROPERTY INSURANCE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE ADDITIONAL INTEREST NAMED BELOW. THIS EVIDENCE OF PROPERTY INSURANCE DOES NOT AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW.

AGENCY Tompkins Insurance Agencies, Inc. 90 Main Street Batavia NY 14020 FAX (A/C, No): (585) 344-1354 E-MAIL ADDRESS: dboyce@tompkinsins.com CODE: SUB CODE: AGENCY CUSTOMER ID #: 00020311		COMPANY Fidelity & Deposit Co. 5788 Wide Waters Pkwy DeWitt NY 13214	
INSURED TOWN OF BERGEN & BERGEN FIRE DISTRICT 10 Hunter Street P. O. Box 249 Bergen NY 14416		LOAN NUMBER EFFECTIVE DATE 5/12/2010	POLICY NUMBER CCP0028674 11 EXPIRATION DATE 5/12/2011 <input type="checkbox"/> CONTINUED UNTIL TERMINATED IF CHECKED
THIS REPLACES PRIOR EVIDENCE DATED:			

PROPERTY INFORMATION

LOCATION/DESCRIPTION
 Fidelity Coverage

THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OR ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS EVIDENCE OF PROPERTY INSURANCE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

COVERAGE INFORMATION

COVERAGE/PERILS/FORMS	AMOUNT OF INSURANCE	DEDUCTIBLE
Tax Collector/Town Clerk	1,163,000	250
Town Supervisor	170,000	250

REMARKS (Including Special Conditions)

CANCELLATION

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, THE ISSUING INSURER WILL ENDEAVOR TO MAIL 10 DAYS WRITTEN NOTICE TO THE ADDITIONAL INTEREST NAMED BELOW, BUT FAILURE TO MAIL SUCH NOTICE SHALL IMPOSE NO OBLIGATION OR LIABILITY OF ANY KIND UPON THE INSURER, ITS AGENTS OR REPRESENTATIVES.

ADDITIONAL INTEREST

Genesee County's Treasurer's Office
 Attn: Scott German
 County Building #1
 15 Main Street
 Batavia, NY 14020

MORTGAGEE	ADDITIONAL INSURED
LOSS PAYEE	
LOAN #	
AUTHORIZED REPRESENTATIVE	
David Boyce/SAC	<i>David S. Boyce</i>

ACORD 27 (2006/07)

INS027 (2006/07)a

© ACORD CORPORATION 1993-2006. All rights reserved.

The ACORD name and logo are registered marks of ACORD